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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,280	03/26/2004	Juanito B. Calagui	Calagui - 5	2188
7590	01/12/2006			
Mr. Walter J. Tencza Jr. Suite 3 10 Station Place Metuchen, NJ 08840			EXAMINER OKEZIE, ESTHER O	
			ART UNIT 3652	PAPER NUMBER

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/811,280

Applicant(s)

CALAGUI, JUANITO B.

Examiner

Esther O. Okezie

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-18 is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Response to Amendment

The amendment filed on 10/03/05 and the remarks presented therewith have carefully considered. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

Claims 8 and 10 are objected to under 37 CFR 1.75(i), as being of improper method form for failing to disclose the steps required by the method. Applicant should note that a method claim requires the description a step. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1,2, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Hui.
2. Re claim 1, Hui discloses the device including a first device (44), which includes a first stick having a first tip; a second device (42) which includes a second stick having

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a second tip; and a third device (24), which includes a first hollow tube in which a spring (30) is located; wherein the first device is connected to the third device so that the first stick can pivot with respect to the third device; wherein the second device is connected to the third device so that the second stick can pivot with respect to the third device; wherein in a rest state, the spring causes the first stick to be separated from the second stick so that the first tip and the second tip do not contact each other; and wherein the first stick and the second stick can be pressed together into a compressed state, so that the first stick pivots with respect to the third device, the second stick pivots with respect to the third device, the spring is compressed by the first and second devices, the first tip and the second tip come into contact with each other; and wherein the first hollow tube and the spring are distinct from each other (figs 7-10).

3. Re claim 2, the third device includes a block portion (22) which is fixed to the hollow tube.

4. Re claim 6, a container (10) for storing the third device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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1. Claims 3,4,7,8,10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hui in view of Japanese Patent 9-122187.

5. Re claim 3, Hui does not disclose hollow tubes for holding the sticks. Japanese Patent 9-122187 discloses the first stick (4) includes a hollow tube (26) connected to a first extension (4) wherein the first stick can be inserted into the second hollow tube (fig 7), wherein the first extension can be inserted into a first slot of the block portion (fig 11)); wherein the second stick (27) includes a hollow tube (23) connected to a second extension (4); wherein the second stick can be inserted onto the third hollow tube; and wherein the second extension can be inserted into a second slot of the block portion. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the chopstick holder of Hui to include hollow tubes for the chopsticks to be inserted within in order to increase stability during manipulation of the sticks.

6. Re claim 4, Hui does not disclose first and second pins for pivoting the sticks. Japanese Patent 9-122187 discloses the block portion (19) includes a first opening through which a first pin (21) can be inserted to connect the first device (27) to the third device and allow the first device to pivot with respect to the third device (18); and the block portion includes a second opening through which a second pin (21) can be inserted to connect the second device (26) to the third device and allow the first device to pivot with respect to the third device (18). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the chopstick holder of Hui to include pins and openings for the pins in order for the chopsticks to have a pivot to swing about for easier manipulation of the chopsticks.

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7. Re claim 7, Hui discloses the method including providing a first device (44), which includes a first stick having a first tip; a second device (42) which includes a second stick having a second tip; and a third device (24), which includes a first hollow tube in which a spring (30) is located; wherein the first device is connected to the third device so that the first stick can pivot with respect to the third device; wherein the second device is connected to the third device so that the second stick can pivot with respect to the third device; wherein in a rest state, the spring causes the first stick to be separated from the second stick so that the first tip and the second tip do not contact each other; and wherein the first stick and the second stick can be pressed together into a compressed state, so that the first stick pivots with respect to the third device, the second stick pivots with respect to the third device, the spring is compressed by the first and second devices, the first tip and the second tip come into contact with each other (figs 7-10); the third device includes a block portion (22) which is fixed to the hollow tube.

Hui does not disclose a method including hollow tubes for holding the sticks. Japanese Patent 9-122187 discloses the first stick (4) includes a hollow tube (26) connected to a first extension (4) wherein the first stick can be inserted into the second hollow tube (fig 7), wherein the first extension can be inserted into a first slot of the block portion (fig 11)); wherein the second stick (27) includes a hollow tube (23) connected to a second extension (4); wherein the second stick can be inserted onto the third hollow tube; and wherein the second extension can be inserted into a second slot of the block portion. It would have been obvious to one of ordinary skill in the art at the

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time of the invention to modify the chopstick holder of Hui to include hollow tubes for the chopsticks to be inserted within in order to increase stability during manipulation of the sticks.

8. Re claim 8, Hui discloses the first hollow tube and the spring are distinct from each other (figs 7-10).

9. Re claim 10, Hui does not disclose first and second pins for pivoting the sticks. Japanese Patent 9-122187 discloses the block portion (19) includes a first opening through which a first pin (21) can be inserted to connect the first device (27) to the third device and allow the first device to pivot with respect to the third device (18); and the block portion includes a second opening through which a second pin (21) can be inserted to connect the second device (26) to the third device and allow the first device to pivot with respect to the third device (18). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the chopstick holder of Hui to include pins and openings for the pins in order for the chopsticks to have a pivot to swing about for easier manipulation of the chopsticks.

10. Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hui in view of Japanese Patent 9-252911.

11. Re claim 5, Hui does not disclose hollow tubes for the chopsticks including fasteners for attaching the hollow tubes. Japanese Patent 9-252911 discloses the first and second chopsticks (fig 3) including hollow tubes (2) and fasteners (3); wherein the sticks can be inserted into the hollow tubes and attached to the hollow tubes by the

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fastener (fig 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the chopstick holder of Hui to include fasteners as taught by Patent JP 0925911 in order to further secure the sticks to the hollow tubes.

12. Re claim 11, Hui discloses the method including providing a first device (44), which includes a first stick having a first tip; a second device (42) which includes a second stick having a second tip; and a third device (24), which includes a first hollow tube in which a spring (30) is located; wherein the first device is connected to the third device so that the first stick can pivot with respect to the third device; wherein the second device is connected to the third device so that the second stick can pivot with respect to the third device; wherein in a rest state, the spring causes the first stick to be separated from the second stick so that the first tip and the second tip do not contact each other; and wherein the first stick and the second stick can be pressed together into a compressed state, so that the first stick pivots with respect to the third device, the second stick pivots with respect to the third device, the spring is compressed by the first and second devices, the first tip and the second tip come into contact with each other (figs 7-10).

Hui does not disclose a method including hollow tubes for the chopsticks including fasteners for attaching the hollow tubes. Japanese Patent 9-252911 discloses the first and second chopsticks (fig 3) including hollow tubes (2) and fasteners (3); wherein the sticks can be inserted into the hollow tubes and attached to the hollow tubes by the fastener (fig 1). It would have been obvious to one of ordinary skill in the

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art at the time of the invention to modify the chopstick holder of Hui to include fasteners as taught by Patent JP 0925911 in order to further secure the sticks to the hollow tubes.

Allowable Subject Matter

Claims 12-18 are allowed.

Response to Arguments

Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EOO 12/18/05



EILEEN D. LILLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600